

## LEGAL REVIEW NOTE

**Bill No.:** HB 246

**LC#:** LC866, To Legal Review Copy, as of  
January 6, 2017

**Short Title:** Authorize firearms on postal service  
property

**Attorney Reviewer:** Todd Everts/Helen Thigpen

**Date:** January 9, 2017

### CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

*As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.*

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review **IS NOT** dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).*

#### Legal Reviewer Comments:

As currently drafted, LC 866 authorizes a person to possess and carry a firearm on real property owned or leased by the United States Postal Service (USPS), including within Postal Service stores or mail rooms or on adjacent sidewalks. It also authorizes firearms to be stored in vehicles parked temporarily on USPS property. However, because federal law currently bans persons from possessing or carrying firearms on USPS property, LC 866 raises potential issues under the Property Clause and Supremacy Clause of the United States Constitution.

The Property Clause of the United States Constitution provides that "Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Art. IV, sec. 3, cl. U.S. Const. The Property Clause has been broadly interpreted as being "without limitation." *Kleppe v. New Mexico*, 426 U.S. 529 (1976). In addition, the Supremacy Clause of the United States Constitution provides that the "Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." Art. VI, cl. 2. As such, when Congress acts, "federal legislation necessarily overrides conflicting state laws under the Supremacy Cause." *Kleppe*, 426 U.S. at 543.

With respect to post offices, Congress authorized the Postmaster General to "prescribe regulations necessary for the protection and administration of property owned or occupied by the Postal Service and persons on the property." 18 U.S.C. § 3061(c)(4)(A). Federal regulations adopted pursuant to authority provided by Congress prohibit persons from carrying firearms or other deadly weapons on USPS property. These regulations, which apply to all real property under the "charge and control" of the Postal Service, as well as all tenants, provide that "notwithstanding the provisions of any other law, rule or regulation, no person while on postal property may carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, or store the same on postal property, except for official purposes." 39 C.F.R. § 232.1(l).

In 2015, a federal appellate court addressed a challenge to the prohibition on firearms on USPS property. The plaintiff in the case possessed a concealed carry permit and sought to bring his gun into a post office building in Avon, Colorado, and to store the gun in his vehicle while he conducted postal service business. The plaintiff alleged the USPS regulation unconstitutionally infringed on his 2nd Amendment right to keep and bear arms. Citing decisions from the United States Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the 10th Circuit Court of Appeals concluded that federal case law did not affect prohibitions on the possession of firearms in sensitive places such as schools and government buildings. *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1128 (10th Cir. Colo. 2015). As such, the 10th Circuit concluded that the USPS regulation banning firearms on postal property was not unconstitutional. The U.S. Supreme Court declined to hear the case. *Bonidy v. U.S. Postal Serv.*, 136 S. Ct. 1486 (2016) (denying the petition for writ of certiorari to the U.S. Supreme Court).

#### **Requester Comments:**